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Public Service Commission
Cannon Building
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4/6/2017

RE: 3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005), PSC Docket 56, published March 1, 2017

Please accept the following comments as an addendum to my written comments filed 3/9/2017. This is meant as a summary of four areas of the proposed regulation needing revision.

We appreciate the care and thoughtful approach of the PSC Staff in drafting the regulation. We especially support the affirmation legislative intent was to recognize there is unpriced value to the Renewable Portfolio Standard (RPS) by allowing a 3% electric rate premium, but did not require those unpriced externalities be calculated as an offset against the RPS Cost of Compliance. We note attempts to calculate externalities are fraught with problems. The DNREC Division of Energy & Climate has used emissions rates and Environmental Protection Agency estimates of the health benefits from lower emissions from the 2012 Delmarva IRP. More current, lower emission rates, and lower health benefit rates are available, but the Division refuses to use them. The Division has used the Social Cost of Carbon estimate per ton from the federal government when lower rates are readily available from our own RGGI auctions. They have included the value of jobs in the solar industry while ignoring jobs lost from higher electric rates.

Fuel Cell cost inclusion

The proposed regulation does discuss Qualified Fuel Cell Provider (QFCP) costs but does not explicitly include these costs in the Cost Cap Calculation. The Commission has repeatedly established ratepayers receive an offsetting value from the legislated renewable energy attributes of the QFCP project, so clearly the QFCP costs need to be included, and the proposed regulation needs clarifying language to do so.

When the commission approved the Fuel Cell Tariff in 2011, it relied on the PSC staff consultant's report the project met legislated cost constraints. Legislation required the monthly cost to ratepayers not exceed the highest existing tariff. The consultant determined the comparison tariff to be the Bluewater Wind tariff at a monthly cost of \$2.42. The consultant calculated the levelized cost of the Fuel Cell Tariff to be \$1.34, taking into account a \$1.96/month of the offsetting value of avoided purchases of Renewable Energy Credits (RECs). Without the REC value the Commission would have had to deny the Tariff.

In 2015, the Commission (See PSC Staff comments to DNREC, page 4, on the DNREC proposed Cost Cap Calculation Rule) told DNREC that under subsections 354(i) & (j) the "total cost of complying with" the RPS necessarily includes the amounts paid by Delmarva's customers as QFCP surcharges. As Staff said: "QFCP costs are borne by ratepayers and one of the benefits is the fulfillment of a significant portion of the RPS obligation. Therefore, the QFCP costs should be included in the final Rule because the ratepayer pays for this and it is used for RPS compliance." Indeed, DNREC also included the QFCP cost in its first three of four iterations of their proposed Cost Cap Calculation Rules. DNREC has accepted Delmarva's annual Renewable Compliance Report since 2012, with QFCP costs included..

The Commission, in 2016, re-iterated its view that the QFCP payments made by Delmarva's customers are indeed a component in the total cost of RPS compliance. In PSC Order No. 8835, Docket.

No. 13-250 (Dec. 15, 2015), the Commission directed Delmarva to modify its bill format to either (1) break the existing Renewable Portfolio Compliance Charge into two line items on its electrical customers' bill, one containing the monthly QFCP charge, the other containing *the remaining* components of the Renewable Compliance Charge (emphasis added), or (b) add a one line description note on the bill that separately identifies the monthly QFCP charge.

There has been discussion QFCP costs should not be included in the Cost Cap Calculation as Delmarva doesn't directly buy the RECs. Does that mean Delmarva couldn't use SRECs from its own solar farm, as the Delaware Electric Cooperative does? Further, there is a legal issue of not calculating in the QFCP costs as paying for RECs. In *Hughes v. Talen Energy Marketing* the court ruled the State of Maryland could not negotiate a higher wholesale price of electricity for a new, in-state electric generator because FERC has the sole right to set wholesale electric rates. Without the REC value the Fuel Cell Tariff paid to Diamond State generation would be in violation of this decision.

Electric Supply Cost is the appropriate divisor

The proposed regulation has defined the Cost Cap Calculation divisor to be a total of supply, transmission, distribution and delivery cost of electricity. But, section 354 (i) and (j) clearly states to apply the statutory cost cap percentages against "the total retail cost of electricity *for retail electricity suppliers.*" (emphasis added). That text specifically keys the benchmark figure to the "cost of electricity *for retail electricity suppliers,*" not the cost of electricity for retail customers or for retail end-users. The divisor, based on statute, is the supply cost only.

The "Freeze Consultation" between the Division of Energy & Climate and the PSC needs definition

If the Cost Cap is exceeded a freeze of the increase in annual requirement for more RECs and SRECs was stated in legislative hearings to be an absolute "circuit breaker" to protect ratepayers. The proposed regulation needs language defining how a freeze or ending a freeze will happen. We support language recommended by the Public Advocate around the consultation being treated as a petition to the PSC, with a tight time frame for a final decision.

Exempting existing contracts from a freeze has no basis in statute, or defining record

Proposed rules § 3.2.21.11 declares: "In implementing a Freeze under these Regulations, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply, or other environmental attributes or delivery of other environmental attributes shall not be abrogated." The Commission specifically refused to grant such exemption in REPSA Docket 56, Order Number 7933 (March 22, 2011) despite the request by several electric suppliers to do so. The Commission stated they would not include a provision not included in REPSA by the General Assembly. The PSC would need to provide a rationale for doing so now.

Sincerely,

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